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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CR-5352-2022(O&M)**Date of decision : 15.05.2023****SUDESH****..... PETITIONERS****VS****JHUMPA FUEL STATION AND ORS.****..... RESPONDENTS****CORAM : HON'BLE MR.JUSTICE ALOK JAIN**

Present: Mr. Salil Sagar, Senior Advocate with
Mr. V.P.Sangwan and Mr. Sunil Kumar, Advocates
for the petitioner.

Mr. Gunjan Rishi, Advocate and
Ms. Hanima Kaur Grewal, Advocate
for the caveator-respondents.

ALOK JAIN, J.

1. The present revision petition has been preferred under Article 227 of the Constitution of India against the impugned judgment dated 28.10.2022, passed by learned Additional District Judge, Bhiwani, whereby the first Appellate Court has set aside the order dated 01.08.2022 (Annexure P-5), passed by Additional Civil Judge (Sr. Divn.), Siwani, granting status quo to the petitioner.

2. The brief facts of the case as narrated by the counsel for the petitioner are that the petitioner had applied for a dealership(retail outlet) at Jhumpa kalan, Siwani, District Bhiwani, Haryana to the respondent No.2, for which the petitioner had done the ground work and fulfilled all the conditions.

It is submitted that he petitioner even taken on lease the land for constructing

the retail outlet, however, the respondent No.2, illegally and without adhering to the principles of equity, vide LOI dated 06.03.2021 had appointed respondent No.1 as a dealer on the said site.

3. Faced with the above, the petitioners filed a suit for declaration to the effect that the LOI issued to respondent no.1 was illegal null and against the principles of equity and further prayed for retraining respondent no.1 from installing or raising any construction for the installation of the petroleum pump at the said site. The petitioner along with the said suit also filed an application under Order 39 Rule 1 and 2 of CPC, *inter alia* praying for an interim injunction. That vide order dated 01.08.2022, the additional Civil Judge, Senior Division allowed the said application and the said order was impugned by respondent No.1 in an appeal. The first Appellate Court vide impugned order dated 28.10.2022, set aside the order dated 01.08.2022 and dismissed the application under order 39 Rule 2, and hence, this petition.

4. Counsel for the petitioner has vehemently argued that the learned First appellate Court has fallen in error on the following grounds:-

- I. that the First Appellate Court has recorded a finding that the balance of convenience lies in the favour of the defendant by considering the documents of the petitioner-plaintiff but has failed to consider the averments and the documents of the plaintiff. It is further submitted that it was the plaintiff, which had approached the Court for relief and not the defendants and therefore, his averments were to be considered for the said relief.
- II. that the First appellate Court has fallen in error inasmuch, the fact that without recording any illegality and perversity in the orders passed by the trial Court, the first Appellate Court could not have imposed its

view without recording any cogent reason to set aside the well-versed order passed by the Additional, Civil Judge.

III. the *prima facie* case has to be considered from the pleadings only and he relies upon the various averments made in the plaint and the self-contradictory defence raised by the respondents in their written statements, especially wherein, on one hand, in the preliminary objection, they denied that any advertisement was sought for, whereas in the reply on merits, they accepted that the applications were invited and the plaintiff had applied. There may a contradictory stand, the same should have been a ground itself to grant the relief to the plaintiff.

5. Learned Senior counsel for the petitioner has relied upon the judgments of the Hon'ble Supreme Court of India in case titled as ***Wander Ltd. and Anr. Vs. Antox India P. Ltd., 1990 (Supp) SCC, 727***, in case titled as ***Mohd. Mehtab Khan and Ors. Vs. Khushnuma Ibrahim Khan and Ors., (2013) 9 SCC 221***, Para 14 and 20 and in case titled as ***Neon Laboratories Ltd. vs. Medical Technologies Ltd. and Ors. (2016) 2 SCC, 672*** to substantiate his argument that the first Appellate Court could not have given its own view without recording the reasons of perversity in the order of the trial Court. He has also relied upon the judgment of the Hon'ble Supreme Court of India in case titled as ***Muddasani Venkata Narsaiah (dead) through legal representative vs. Muddasani Sarojana, (2016) 12 SSC, 288***, Para 14, to submit that the pleadings had to be considered and when there was no specific denial and self-contradiction in the written statement filed by the respondents, the order of status quo was absolutely legal and valid. He also relied upon the judgment of the Hon'ble Supreme Court of India in case titled as ***Rameshwar and Ors. Vs. Jot Ram and Anr., (1976) 1 SSC, 194*** to submit that any

subsequent event shall not unsettle the rights of the parties and the rights have to be seen on the date of the application initiated. Accordingly, the counsel for the petitioner submits that the present petition deserves to be allowed and the status quo during the pendency of the suit.

6. That by virtue of a caveat application No.3634 of 2022, the respondents are already being represented, hence, let notice of motion be issued

7. Mr. Gunjan Rishi, Advocate, accepts notice on behalf of the respondents and submits that respondents does not wish to file any written response and is ready with the arguments.

8. The learned counsel for the caveator-respondents has raised a preliminary issue that the petitioner has no *locus standi* as no LOI was ever issued to the petitioner, and all the actions taken by petitioner were at the best on the verbal assurance by the respondent No.2 which the answering respondents do not admit. He further submits that the balance of convenience and the irreparable loss and injury has to be weighed in favour of both the parties before deciding the application under Order 39 Rule 1 and 2 of CPC, and the best case of the petitioner is that she has taken a land on lease for 30 years at the annual rent of Rs.3,36,000/-, vis-à-vis, the person to whom LOI has been issued has invested more than Rs.40 lacs, and the entire business has been put to halt.

9. On the strength of the above, he submits that the respondents are a private entity and well with its rights to grant and/or not to grant the outlet to any person. He relies upon the documents submitted by the petitioner, which create a clear embargo upon the petitioner to even file a suit. There is no right or title vested in the petitioner to entitle her to even lodge a suit.

10. Learned counsel for the respondents has further argued that the order of the first Appellate Court may not have the exact words that the order of the trial Court is perverse or illegal but the perusal of the same clearly shows that the Appellate Court has applied its mind and has gone through the entire matter and has given a detailed reasoned order, which itself demonstrate that the trial Court order suffered from perversity.

11. In light of the above, after considering the entire matter what transpires is the basic principle of law which requires to be followed, while deciding an application under Order 39 Rule 1 and 2 of CPC is that the Court has to adjudicate the matter within the parameters of the balance of convenience, irreparable loss and whether the same can be compensated in terms of money or not. The Hon'ble Supreme Court of India in case titled as **"Narendra Hirawat and Co. Vs. Sholay Media Entertainment Pvt. Ltd. and Anr", 2022 (2) R.C.R. (Civil) 531** has laid down the following parameters for grant of interim injunction:-

*"18. In the case of **Shah Babulal Khimji v. Jayaben D. Kama and Anr. [(1981) 4 SCC 8]**, a three Judge Bench of this Court had opined that Section [104](#) read with Order [43](#), Rule [1](#) of the Code of Civil Procedure, 1908 applied to a Letters Patent appeal as well. In **Dorab Cawasji Warden v. Coomi Sorab Warden and Ors. [(1990) 2 SCC 117]** grant of mandatory injunction at the interim stage has been left to the sound judicial discretion of the Court. **Metro Marins and Anr. v. Bonus Watch Co. (P) Ltd. and Ors. [(2004) 7 SCC 478]** also follows the principles laid down in the case of **Dorab Cawasji Warden (supra)**. But these two authorities dealt with the question of grant of interim injunction in*

*relation to disputes arising out of transfer of immovable property. Applicability of Rules 1 and 2 of Order 39 of the Code on the question of granting interim injunction has been reconfirmed by a Coordinate Bench of this Court in **Best Seller Retail (India) Private Ltd. v. Aditya Birla Nuvo Ltd. and Ors.** [(2012) 6 SCC 792]. In **Colgate Palmolive (India) Ltd. v. Hindustan Lever Ltd.** [(1999) 7 SCC 1], the principles guiding grant of interim injunction have been summarized as:-*

"24. We, however, think it fit to note herein below certain specific considerations in the matter of grant of interlocutory injunction, the basic being non-expression of opinion as to the merits of the matter by the court, since the issue of grant of injunction, usually, is at the earliest possible stage so far as the time-frame is concerned. The other considerations which ought to weigh with the court hearing the application or petition for the grant of injunctions are as below:

- (i) extent of damages being an adequate remedy;*
- (ii) protect the plaintiffs interest for violation of his rights though, however, having regard to the injury that may be suffered by the defendants by reason therefor;*
- (iii) the court while dealing with the matter ought not to ignore the factum of strength of one party's case being stronger than the other's;*
- (iv) no fixed rules or notions ought to be had in the matter of grant of injunction but on the facts and circumstances of each case - the relief being kept flexible;*

(v) the issue is to be looked at from the point of view as to whether on refusal of the injunction the plaintiff would suffer irreparable loss and injury keeping in view the strength of the parties' case;

(vi) balance of convenience or inconvenience ought to be considered as an important requirement even if there is a serious question or prima facie case in support of the grant;

(vii) whether the grant or refusal of injunction will adversely affect the interest of the general public which can or cannot be compensated otherwise."

12. Accordingly, relying upon the dicta of the Hon'ble Supreme of India in the case of **Narendra Hirawat's** judgment cited supra, the petitioner has not been able to prove any irreparable loss nor there is any balance of convenience and hence, the rigors of Order 39 Rule 1 and 2 of CPC are not met. Therefore, there is no question of grant of any injunction or any order in favour of the petitioner.

13. In light of the above, settled preposition of law and the judgements passed by the Hon'ble Supreme Court of India, the present being devoid of any merit is dismissed.

15.05.2023

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Whether speaking/reasoned:-

Yes

Whether Reportable:-

Yes

(ALOK JAIN)
JUDGE